



MILWAUKEE POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

750 - AUDIO-VIDEO RECORDED INTERVIEWS

GENERAL ORDER: 2012-10

ISSUED March 12, 2012

EFFECTIVE March 12, 2012

ACTION: Creates Standard Operating Procedure 750

750.00 PURPOSE

This policy has been established specifically for members of the Department trained in the use of the department's digital Audio Video Recording System.

The purpose of this policy is to establish clear guidelines on use of the digital Audio Video Recording System for recording custodial interviews and forensic interviews and the associated use, management, storage and retrieval of such recordings.

REDACTED

This policy is not intended to provide guidance on when Miranda warnings should be given or when the right to counsel attaches, as each case is unique.

750.05 POLICY

The use of audio-video recordings during custodial or forensic interviews is intended to enhance the investigative process and assist in the prosecution of criminal cases. The recording of custodial interviews will assist the department in demonstrating the interview process, preserving the statements of the accused, and defending against claims, such as deprivation of the right to counsel and the right against self-incrimination.

This policy is mindful of the benefits of recordings, balanced with the overwhelming public policy demands upon the police in solving crimes.

This policy applies only to custodial or forensic interviews that are conducted in a department facility.

750.10 DEFINITIONS

- A. **Custodial interview:** Questioning initiated by law enforcement officers after a person is taken into custody or otherwise deprived of his or her freedom in any significant way. This not only applies to secure holding facilities, but also may apply to interviews conducted in hospitals, Department vehicle, etc.

- B. **Forensic Interview:** A video recorded interview of a child victim or witness that is conducted by a trained forensic interviewer.
- C. **Recorded Interview room:** For the purpose of this policy, includes any designated room within a department facility that is outfitted with audio-video recording equipment.
- D. **Recap interview:** For the purpose of this policy, when statements and admissions are initially made outside the presence of electronic recording equipment, members are encouraged to conduct an interview in a recording room in order to summarize the previous recorded statements of the subject.

750.15 PROCEDURES

A. RECORDING REQUIRED

Members shall use the system to record custodial interviews or forensic interviews when any of the conditions exist:

1. When conducting a custodial interview and the subject interviewed is an adult (17 years of age or older) and the crime is any felony or a misdemeanor involving a firearm **or**
2. The person is a juvenile (under 17 years of age) and is being interviewed regarding either a felony or misdemeanor **or**
3. When an approved member of the department conducts a forensic interview. As a matter of practice, forensic interviews should be conducted in a location designated by the commander of the Sensitive Crimes Division.


B. EXCEPTIONS TO THE RECORDING REQUIREMENT:

1. **SYSTEM IS UNAVAILABLE-** Instances where the Digital Audio-Recording System is unavailable (equipment malfunctions, all equipped rooms are already in use, etc.);
2. **SPONTANEOUS STATEMENTS-** Statements not made in response to police questioning;
3. **ROUTINE BOOKING QUESTIONS-** Statements made in response to questions that are routinely asked during the arrest and booking process;
4. Statements made in accordance with this procedure that are not required to be recorded, but are later determined to be an offense that would have required a recorded interview (i.e. a battery originally believed to be a misdemeanor, but is later deemed to be a felony);

5. STATEMENTS MADE DURING A CUSTODIAL INTERVIEW AT ANOTHER LOCATION (out of state, correctional facility, hospital) which is not equipped with recording equipment, and the reasons for using such other location is not to circumvent this policy
 6. SUSPECT REQUESTS INTERVIEW NOT BE RECORDED-Statements by a subject who has indicated that he/she will only participate in the interview if it is not recorded; or
 7. ERROR-The failure to record was due to inadvertent error or oversight and was not the result of intentional conduct of a member.
- C. Members conducting an interview, but not using the audio video system under the above exceptions should make every reasonable effort to use an audio recorder to capture the statement.
- D. The member/s conducting or assisting with the interview shall be responsible for the operation of the recording device used during the interview and will monitor the same to ensure that the recording is not interrupted. The member accessing the Digital Audio-Video recording system must log into the system using their authorized user name and password.
- E. OFFICER DISCRETION - Members are encouraged to conduct interviews and interrogations at the time when they believe the circumstances are opportune for eliciting information from a subject. This policy is not intended to discourage field interrogations (i.e. at hospitals, jails, police vehicles, other locations where recording is not practicable). In the event statements and admissions are developed outside of the recording room(s), when feasible, members should continue to the interview in a recording room for the purposes of a recap interview as defined herein.
- F. RECORDING IN ENTIRETY - To maximize the effectiveness of electronic recording and the integrity of audio-video documentation, members shall adhere to the following:
1. Interviews should be recorded in its entirety.
 2. The recording shall begin before the person is read their Miranda warnings.
 3. During short periods when the interview is interrupted, such as when the person needs to use the restroom, etc., the recording should continue.
 4. At the conclusion of the interview, the member/s conducting the interview shall deactivate the recording equipment immediately upon the exit of all parties from the interview room

NOTE: Nothing in this policy prohibits the use of electronic recording equipment for any other interview at the discretion of the member.

750.20 INTERVIEW**A. INTERVIEW PREPARATIONS**

1. Ensure that the subject being interviewed is positioned in a way that their voice will be audible on the recording.
2. Members should ensure that questions and statements that are inaudible are repeated or clarified during the recorded interview.
3.  REDACTED
4. **ATTORNEY CONSULTATIONS** - The recording shall be continuous and uninterrupted during the interview process, unless the person interviewed and their attorney elects to confer privately. In such cases, the member responsible for the recording shall advise the attorney of the use of recording equipment, and offer: to deactivate the audio, or to provide an alternate room for the conference, or to turn off the recording equipment during the conference between the attorney and the subject. If there is an interruption in the recording in order to accommodate the subject and attorney, note the date and time prior to stopping the equipment and re-state the date and time when the equipment is again turned on.
5. **EAVESDROPPING:** At no time will the system be used to record the conversation of another member/s without the consent of all parties. This does not prohibit another member of the Department from monitoring interviews conducted in accordance with Sections IV A (1-3) of this SOP.
6. If the person interviewed has previously indicated they wished to have attorney present, but later requests to make a statement without an attorney, the member conducting the interview should confirm this during the recorded interview.

B. POST INTERVIEW

The member(s) conducting the interview should:

1. Transfer the recording only to new and unused DVD's. Storage, either directly or indirectly to other medium such as flash drives, external hard drives, etc., is strictly forbidden.
2. DVDs of the interview can be created and provided only to the prosecutor and/or the defense attorney as part of the discovery process or to an outside law enforcement agency with the approval of a supervisor.

3. WRITE-PROTECTION – The department will not use rewritable discs for dissemination.
4. WRITTEN STATEMENT REQUIRED. In all audio-video recorded interviews, the member conducting the interview shall submit a supplemental incident report, which summarizes the interview. This supplemental report shall include:
 - a. The date and time the interview began.
 - b. The location of the interview.
 - c. The names of all individuals present.
 - d. A synopsis of the statement provided, or if the person remains silent, asked not to make a statement, or requested an attorney.
 - e. The time and duration of all breaks or interruptions, such as to use the restroom, eat, etc.
 - f. The date and time the interview concluded.

750.25 EVIDENCE AND EQUIPMENT

A. PRESERVATION OF EVIDENCE AND DISCOVERY REQUESTS

1. No person shall alter the original electronic recording media.
2. All data and media associated with the recorded interview are the property of the Milwaukee Police Department and dissemination outside of the Department or prosecutor's office is prohibited unless specifically authorized by the Commanding Officer of the Criminal Investigation Bureau or Open Records.
3. Requests for copies of recordings other than those provided to the prosecutor or defense counsel must be made through the Central Records Division, Open Records Section.
4. RETENTION: Recordings of interviews are considered evidence and shall be handled and retained in accordance with SOP 560-PROPERTY.
5. Members who are not involved with the case, but wish to view a recorded interview must submit a request to the Assistant Chief of the Criminal Investigation Bureau or his/her designee.
6. Members seeking to view and/or use electronic recordings for training purposes must submit a request in the form of a Department Memorandum (PM-9E) to their commanding officer for approval.

B. MAINTENANCE OF EQUIPMENT

1. The Information Technology Division will be responsible for maintaining the electronic recording equipment. Each respective work location will ensure that there is an adequate supply of DVDs available at all times.
2. In the event the equipment requires service or repair, notify Information Technology Division Help Desk promptly.

A handwritten signature in black ink, reading "Edward A. Flynn", is positioned above a thin horizontal line.

EDWARD A. FLYNN
CHIEF OF POLICE